IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1547 of 2006

N.J. Gohil .. Petitioner

versus

Kanga & Co. .. Respondent

...

Mr.N.M. Ganguli for the petitioner.

Mr.S.K. Talsania i/b Kanga & Co. for the respondent.

**CORAM : D.G. KARNIK, J**

**DATED : 3rd July 2006.**

**P.C.:**

1. By this petition the petitioner - workman challenges the order dated 11th November 2005 passed by the Industrial Court partly rejecting his complaint under item 9 schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971 (for short 'the Act).

2. The petitioner filed a complaint before the Industrial Court alleging that he was required to work overtime for which wages were not paid to him. The petitioner did not quantify in the complaint the amount claimed by way of overtime wages nor gave any particulars of the overtime work which he was allegedly required to put in. He only prayed that an adhoc amount of Rs.50,000/- be paid to him towards the overtime wages without giving any details of any overtime at all. On the basis of the vouchers and evidence produced by the employer, the Industrial Court calculated the overtime and directed the respondent no.1 to pay Rs.9,543.95 as the overtime. That order is impugned in this petition.

3. I am not inclined to interfere the Writ Petition for reasons more than one. Though the petitioner had not given any details of the wages for the alleged overtime, the Industrial Court has computed them and has directed the payment of Rs.9542.95. What was the extent of the overtime work was performed by the petitioner and what is the amount due in respect of that overtime are questions of fact. The finding of fact recorded by the Industrial Tribunal are not shown

to be perverse.

4. Secondly under section 28 of the Act, complaint of an unfair labour practice has to be made within a period of 90 days of the commission of an unfair labour practice. The complaint was made on 30th September 1996. This means complaint could be limited to the overtime which was put in by the petitioner after 30th June 1996. Any alleged unfair practise of non-payment which had fallen due prior to 30th June 1996 could not be investigated in the complaint unless sufficient cause for condonation of delay was shown. The application for condonation of delay did not disclose any cause at all and it only said that prejudice would be caused to the petitioner if delay was not condoned. Before me, learned counsel for the petitioner fairly conceded that no overtime work was done by the petitioner after 30th June 1996. This means that in fact, petitioner was not entitled for any amount by way of an overtime. However, since the respondent no.1, the employer, has not challenged the impugned order and has paid the entire amount awarded, no interference is called for at the instance of the employer.

5. Learned counsel for the respondent no.1 submitted that the petitioner is guilty of suppression of facts as also making mis-statements in the petition and therefore, the petition should not be entertained at all. He submitted that petitioner has not mentioned that the amount as per the award has already been paid by the respondent no.1 and the cheque has been encashed by the petitioner without demur and with prejudice to his claim. Secondly, he pointed out that in paragraph no.16 of the petition, the petitioner has falsely averred that he had made an application to the Industrial Court for permission to recall the witnesses which was not decided by the Industrial Court. Counsel for the petitioner submitted that application was decided and has annexed a copy of the order to the affidavit in reply. Thus, the statement made in paragraph no.16 of the petition is a patently false statement. In my view, this is also a ground for not entertaining the Writ Petition.

6. In the circumstances, Writ Petition is rejected summarily.

**(D.G. KARNIK, J)**